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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1290 OF 2003

Maruti Balaji Dengle ... Appellant

V/s

The State of Maharashtra ... Respondent

Mr. Abaykumar Apte, advocate appointed for the appellant.

Mr. P.S. Hingorani, A.P.P. for the respondent.

CORAM: D. G. DESHPANDE &
SMT. NISHITA MHATRE, JJ.

DATED: 22ND JUNE, 2007.

ORAL JUDGMENT (PER DESHPANDE, J.):

1. Heard Mr. Abhaykumar Apte for the accused and the learned A.P.P. for the State.

2. This is an appeal by the accused challenging his conviction under Section 302 of the Indian Penal Code under which he is sentenced imprisonment for life.

3. The accused was tried for committing murder of his wife Ushabai. He was 66 years of age when the trial in 2000 started against him. The incident is of 18.5.2002. Now he is 71 years of age. His wife Ushabai was 54

years of age. They were leading a happy married life. The cause of murder, according to the prosecution and the witnesses was that, some ancestor land was sold by the accused and the amount of Rs.30,000/- was kept by him in the Bank of Maharashtra, Sangamner Branch in his own name and in the name of his younger son Mahesh. The accused was addicted to liquor. Therefore he used to withdraw the amount from the bank which was opposed to by the deceased Ushabai, his wife. On 18.5.2002 Ushabai asked the accused to withdraw some money for helping her son to open a book stall. The accused was not ready. A quarrel took place and in that fit of anger the accused signed the withdrawal slip and threw the withdrawal slip and the pass book on Ushabai and went away. After some time he came back and inflicted blows with a knife on the body of Ushabai as a result of which she died.

4. While Ushabai was being attacked, somebody informed the matter to her son Bhalchandra. He came and found his mother killed. The incident was witnessed by his wife i.e. the daughter-in-law of the accused. The blood stained clothes i.e. baniyan of the accused was seized. Medical evidence was led alongwith other evidence. Eleven injuries were found on the body of Ushabai and, therefore, the trial Court convicted the accused as said above.

5. The main crux of the argument of Mr. Apte was that, even though the accused had inflicted blows, he could not be said to have any intention to commit murder. It was done by him in the fit of anger. The accused was in advance stage of his age being 65 or 66 years at the time of the incident. Today he is 71 years. He had led a long happy married life with Ushabai and children. There were no other reference from which any motive could be inferred. Therefore, the main contention of Mr. Apte is that this could not be a case under Section 302 but it could be under Section 304 either Part-I or Part-II and entitling the accused for reduction in the sentence.

6. Even otherwise so far as the merits of the matter are concerned, Bhalchandra has lodged the F.I.R. against his own father, the accused. Bhalchandra has proved his F.I.R. (Exh.7), in which he has stated that at the relevant time he was in his shop and at about 2.00 p.m. One Nilesh from his neighbourhood came to his shop and informed that accused has killed his mother. He went there and found that his mother was lying with bleeding injuries and his wife Shital told him that the accused gave repeated blows to Ushabai. Thereafter Ushabai was removed to the hospital but she was declared

dead. The dispute over withdrawal of amount from the bank is the main cause given by PW-1 Bhalchandra.

7. Shital, wife of PW-1 Bhalchandra is an eye witness to the incident. She has stated after giving earlier history that, she was in the house at 2.00 p.m. when the incident took place, so also Ushabai and the accused. The house consists of two rooms including kitchen. Ushabai was lying on Satranji. Accused got up and went to the kitchen. He brought Thali for lunch in drawing room and got up angrily and took out a knife which was kept near the T.V. and inflicted blows one after the another on Ushabai. She then shouted for help and then accused went away. Neighbours came, so also her husband Bhalchandra, who took Ushabai to the hospital where she died on the same day. The cross-examination of both these witnesses, PW-1 and PW-8 had not at all resulted in creating any doubt about the incident. There are absolutely no reason to implicate the father falsely. Their evidence is fully supported by medical evidence because as per the post-mortem report Exh.26, the doctor noticed as many as 11 injuries which are as under :-

(1) C.L.W. left cheek 7 cm x 2 cm upto left eye bone deep.

(2) Stab injury right chest upper part (Supramamaory region) perforating chest wall.

(3) Stab injuries left side of chest wall suprammanory region.

(a) 3 cm x 2 cm x 2 cm.

(b) 2 cm x 1 cm x 2 cm.

(c) 2 cm x 1 cm x 2 cm. each.

(4) Stab injury midline of chest wall perforating the chest wall 2 cm x 1 cm x 1 cm.

(5) Stab injury left breast medial part perforating the chest wall 2 cm x 1 cm x 2 cm.

(6) Stab injury chest left inframmonary region below left breast performing the chest wall 5 cm x 2 cm x 3 cm.

(7) Stab injury chest right inframannory region (lower part of the chest wall) 3 cm x 2 cm x 2 cm.

(8) Stab injury abdomen right eliac fossa region 3 cm x 2 cm through all layers of abdomen.

(9) C.L.W. right thigh 5 cm x 2 cm x 3 cm.

(10) Stab injury right thigh and right labiamajora about 7 cm x 2 cm upto pelivs inside.

(11) C.L.W. left hand lateral aspect 3 cm on palmer side 5 cm on dorsal side through and through.

According to the doctor, all the injuries were possible by Article 7 (Exh.9) knife. Post-mortem report is at Exh.26.

8. It was in this back ground the learned advocate for the appellant Mr. Apte tried to contend that this cannot be a case for convicting the accused for murder. The accused had no intention to kill his wife. He was suddenly angry and in the fit of anger he inflicted blows and, therefore, this is a case where Section 304 Part-II would be attracted.

9. He also submitted that, looking to the age of the accused, the years of happy married life spent by him with Ushabai for more than 20 years and the paltry reason

for attack, the conviction of the accused is required to be changed from Section 302 to Section 304 Part-II of the Indian Penal Code.

10. We have seriously considered these submissions of Mr. Apte. It is true that the accused otherwise had no reason to attack his wife. He had spent a normal married life with her for more than 20 to 25 years. There is no previous enmity. Their relations were good otherwise and the cause of attack was the dispute over withdrawal of money by the accused for his so-called addiction to the liquor. It is also true that there was no prior motive for accused to kill his wife.

11. However whether there was intention to kill or not can be gathered from the nature of the injury,d the location and the number also. We have reproduced the evidence of the doctor so far as the injuries suffered by Ushabai. All the injuries are on vital part of the body i.e. in chest, resulting in instant death. Further, from the evidence of PW-1 it is clear that after throwing the withdrawal slip and the bank pass book at Ushabai, the accused went out and again came back, took his lunch plate from the kitchen and then suddenly he was overpowered by the desire to kill his wife. There was, therefore, sufficient time for the accused to cool down

and going away from the house after throwing withdrawal slip and bank pass book and returning after some time, was sufficient to indicate that the accused had cooled down. Then it appears suddenly that he became angry and inflicted blows. But the number of places and placement of injuries and the gravity does not bring the case under Section 304 Part-II of the Indian Penal code. Intention to kill has to be gathered from circumstances and these circumstances are, the nature, the number and the placement of the injuries. It cannot be said that this is a case of creation of sudden provocation. He had time to cool down and there was no reason for him to cause so many injuries to the poor lady.

12. We are therefore not in agreement with Mr. Apte that Section 304 should be invoked and the conviction may be altered to Section 304 of the Indian Penal Code.

13. The accused has been rightly convicted on the basis of deposition of PW-1 Bhalchandra and his wife PW-8 Shital, recovery of the knife at the instance of the accused and finding of human blood stains on his baniyan. There is no merit in the appeal.

14. It is true that the accused is of 70 years of age, but our hands are tied by the provisions of law and,

therefore, the appeal has got to be dismissed.

15. Appeal stands dismissed.

(D.G. DESHPANDE, J.)

(SMT. NISHITA MHATRE, J.)